United States District Court Western District of Washington

CLYDE RAYMOND SPENCER
) Case No.
C94-5238 RJB
Petitioner,
)
Vs.
)
JOSEPH KLAUSER, Warder, Idaho State
Institution,
)
Respondent.
)

DEPOSITION OF JAMES MATTHEW PETERS

July 30, 1996

Reported by Jodi C. Williams

ORIGINAL





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Home Page: http://www.webfactor.com/tucker/ E-Mall: tucker@rmci.net **DEPOSITION OF JAMES MATTHEW PETERS,** taken at the instance of the petitioner, at the United States Attorney's Office, 877 West Main Street, First Interstate Center, Suite 201, in the City of Boise, State of Idaho, commencing at 9:30 a.m., on Tuesday, July 30, 1996, before Jodi C. Williams, Court Reporter and a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the Federal Rules of Civil Procedure.

APPEARANCES

For Petitioner

MAIR CAMIEL & KOVACH, P.S.

by PETER A. CAMIEL 710 Cherry Street

Seattle, Washington 98104

For Respondent

UNITED STATES ATTORNEY'S OFFICE

CORRECTIONS DIVISION by DONNA MULLEN

Assistant Attorney General Post Office Box 40116

2411 Chandler Court

Olympia, Washington 98504-0116

A. Because of the sensitive nature of the case as the consequence of Mr. Spencer's position in the police department.

At the time, I was responsible for reviewing and making final decisions in all child sexual abuse and rape cases. And in the Clark County prosecutor's office and in the routine average case, that was not a problem.

Sensitive cases or cases that were close calls, I would review it and refer the case to Art Curtis, who was the elected prosecutor.

And in my view, that case, as initially presented, was not provable. But I didn't want to make that call myself because Mr. Spencer was a policeman. And I didn't want to be accused of favoritism or have someone suspect that he got better treatment because he was a police officer.

And so we referred it to an outside agency who didn't know Mr. Spencer. I knew Mr. Spencer. But someone who was completely independent and asked them make an independent judgment.

- Q. Do you know what materials were forwarded to the King County prosecuting attorney?
 - A. I assume everything we had.

- Q. What was the result of the King County prosecutor's review of the case?
- A. Now, you have to understand that the case was reviewed only when we had one victim, a female, five-year-old victim.
 - Q. Yes.

A. The status of the case changed later when two other children came forward with allegations.

But at the time, they concurred with me that the case wasn't provable. And we declined it as a result of that.

- Q. Why did you believe the case wasn't provable?
- A. I don't remember the specifics. That's 12 years ago. I don't remember the specifics of why not.

But at the time and to this day, I go through a three-step analysis with every criminal case. And that is, first, to determine whether it appears that a crime was committed. And, secondly, whether I can prove it beyond a reasonable doubt. And, third, whether there is some reasonable way short of bringing the power of the government down on somebody to resolve the matter, such as pretrial diversion or civil compromise or something short of

I remember one dramatically. It was a doctor from Kaiser who had taken a photograph of a gaping rectum of a girl who was about eight who had been subjected to chronic penetration with a foreign object by her mother and brother. And I remember that one clearly because the photo was so dramatic.

No others immediately jump out.

- Q. Focussing your attention on the Spencer case, do you recall the types of allegations that the female victim, Kathryn Spencer, was making?
 - A. No.

- Q. Do you recall the types of sexual abuse that she was alleging?
 - A. No.
- Q. Were you ever involved in an interview with her?
- A. I believe I was in the presence of a defense attorney in Sacramento.
- Q. You indicated earlier that when the only victim was Kathryn Spencer, upon your initial review of the case, you believed the case wasn't provable. Do you recall why you thought that?
- A. No. Probably the absence of corroboration or -- I just don't remember. If I

1 Q. DeAnne?

- A. I met them both.
 - Q. It was DeAnne?
 - A. Yes.
 - Q. Did you ever interview Matt Hansen?
- A. I don't think so. It was never my practice, nor is it my practice now, to get involved in interviews with child molesting victims unless I'm certain the case is going to go to trial. I think they have to tell their story to too many grown-ups that they don't know without having to meet another grown-up and tell the ugly details to them.

So I don't have any memory of doing that, and it wouldn't have been my practice to do that.

Now, if I had, there would be detailed notes because I always took notes. And there would be notes in the file. So I'm not saying I didn't, but I don't think I did.

That case was heading toward trial. But I usually didn't get involved with actually preparing the child for trial until a couple of weeks before when I was sure it was going to go.

I might have met them. And, in fact, my practice would have been to meet the child, take

- 1 JAMES M. PETERS, PETITIONER'S WITNESS, SWORN OR AFFIRMED
- 2 DIRECT EXAMINATION
- 3 BY MR. CAMIEL:
- 4 Q. Would you state your full name and spell your last name,
- 5 please.
- 6 A. My name is James Matthew Peters. P-e-t-e-r-s.
- 7 Q. And your professional address?
- 8 A. Box 32, Boise, Idaho.
- 9 Q. Mr. Peters, how are you currently employed?
- 10 A. I'm an assistant United States attorney in the District of
- 11 Idaho.
- 12 Q. Were you previously employed as a deputy prosecuting
- 13 attorney in Clark County?
- 14 A. Yes, I was.
- 15 Q. And were you the primary deputy prosecuting attorney in the
- 16 case involving Mr. Spencer?
- 17 A. That's true.
- 18 Q. Mr. Peters, do you recall when charges were initially filed
- 19 against Mr. Spencer?
- 20 A. No, I do not.
- 21 Q. Do you recall the fact that there was more than one
- 22 information filed against Mr. Spencer?
- 23 A. Yes.
- 24 Q. It was amended on occasion.
- 25 A. I do recall that.



- 1 the request of the attorney general for an item. So if that's
- 2 review, then, yes.
- 3 Q. All right. And was the item that you were looking for the
- 4 medical examination report pertaining to Kathryn Spencer?
- 5 A. That's right.
- 6 Q. Do you recall now whether or not back when you were handling
- 7 the Spencer case you were aware of the fact that Kathryn Spencer
- 8 had been seen by a physician down in California for a sexual
- 9 abuse examination?
- 10 A. I do not recall that.
- 11 Q. You don't recall whether you knew that at the time?
- 12 A. I don't believe I -- I don't have any recollection that she
- 13 had seen a physician, but I don't have many recollections about
- 14 this case because it was so long ago and there have been so many
- 15 cases since then.
- 16 Q. When you went to review the Clark County Prosecutor's file
- 17 to see if there was this medical examination report within the
- 18 Clark County Prosecutor file, had you at that point in time
- 19 received a copy of the report so that you knew what to look for?
- 20 A. No.
- 21 Q. If you could turn to Exhibit 1 in the notebook.
- That's the medical examination report I've asked you about.
- 23 Have you seen this report recently?
- 24 A. Yes.
- 25 Q. When you reviewed the prosecutor's file in the last several

- 1 weeks or few months, did you see this report anywhere in the
- 2 prosecutor's file?
- 3 A. No, it wasn't there.
- 4 Q. Did you review the Clark County Sheriff's office files while
- 5 you were at the -- about the time you were in the prosecutor's
- 6 files?
- 7 A. Yes, sir, I did.
- 8 Q. And did you find this report in the sheriff's office files?
- 9 A. Yes.
- 10 Q. If you could turn to Exhibit No. 12 in the book.
- Did you find attached to the medical report, Exhibit No. 12,
- 12 | Sharon Krause's utility report?
- 13 A. I don't recall. I wasn't looking for a utility report.
- 14 Q. Turn your attention back to late 1984 and 1985 at the Clark
- 15 County Prosecutor's office. I want to ask you about how
- 16 discovery was handled in criminal cases. Once charges were
- 17 filed against an individual and a person was arraigned, what was
- 18 | the practice at that time with regard to discovery?
- 19 A. We had an open file system at that time. Defense attorneys
- 20 came in, and in lieu of making a formal discovery motion to the
- 21 court, they signed a waiver form where they agreed not to copy
- 22 or otherwise disseminate any of the information that they
- 23 received from us. It was voluntary discovery, and if they would
- 24 agree to do that, and to my knowledge they always did, we just
- 25 gave them complete open access, and as a consequence, they got

MR. CAMIEL: I don't have that. I don't know if the attorney general has it.

MR. SAMSON: We will attempt to find it, Your Honor.

THE COURT: If you have it, I would like to see it, and maybe Mr. Peters would.

Q. (By Mr. Camiel) Mr. Peters, during the pendency of the Spencer case, did you involve yourself in the interviews of any of the three victims?

A. I recall being present at interviews of two of the children in Sacramento, California. Those were the defense attorney's interviews. As to whether I interviewed the Hansen boy, I don't have independent recollection. If I had, I would have taken notes, and those notes would be in the file.

I specifically recall going to Sacramento because that's the only time I ever did that in the eleven years I was in the prosecutor's office, and so that stands out in my mind.

Q. All right.

MR. CAMIEL: Your Honor, the attorney general's office has found what appears to be a copy of the omnibus application that was entered in court and signed by the judge. I haven't marked it as an exhibit yet, but I would like to do that after we make copies of it.

THE COURT: You don't mind if I look at this?

MR. CAMIEL: Not at all.

MR. SAMSON: We would have no objection to its

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EXAM. DISPOSITION
ADDITIONAL PROPERTY - ATTACH UTILITY/PROPERTY REPORT. DETAIL INFORMATION NOT
INCLUDED IN BOXED PROPERTY SECTION

EXHIBIT

TIONAL VEHICLE INFORMATION NOT INCLUDED IN BOXES

7. PARENT, GUARDIAN'S NAME, ADDRESS, PHONE NUMBER OF JUVENILE IN DETENTION INDICATE IF CONTACTED AND IF INCIDENT ADJUSTED

8. LIST DOCUMENTS ATTACHED - (AIR FORM MEDICAL RELEASE, WAIVERS, ETC.)

9. RECONSTRUCT INCIDENT AND DESCRIBE INVESTIGATION

10. SYNOPSIS FOR PROSECUTOR ON CLEARED CRIMES AND CUSTODIES

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Case 3:11-cv-05424-BHS Document 79-1 Filed 06/18/12 Page 15 of 25 RNIA DAVIS MEDICAL CENTER SACRAMENTO

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THERAPEUTIC/DIAGNOSTIC PROCEDURES REPORT

032 084 97 17 4 SPENCER, PATHRYN E. C1 13 75 EXP 10 84

762/PED ACC All cases of Suspected Child Abuse Neglect are to be reported by telephone and in writing (by sub-initing this form) to the designated agencies (Cand D below) within 36 hours. (Penal Code Section 11161.5 and 11161.7)

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Previous reports of abuse of child or in family? Yes	☑ No If yes, describ	e when, who involve	ed, etc.	

Case 3:11-cv-05424-BHS Document 79-1 Filed 06/18/12 Page 16 762/PED ACC SACRAMENTO 032 084 97 17 4 THERAPEUTIC/DIAGNOSTIC SPECCELL CATHRYN E. 08 30 dL PROCEDURES REPORT .1 12 75 [XP 10 84 LUCC: PHYSICAL EXAMINATION Patient's General Appearance: %ile remails obild officing in the Locate and describe in detail any injuries or findings related to maltreatment. Indicate location of lesions/findings; shade for bruises or burns. Beside each injury indicated note color, size, pattern, texture, and sensation. Note if recognizable imprint or bruise goes around curve. A pelvic examination should not be performed unless the parent, guardian or minor consent or unless necessary as part of treatment. See Department of Health Regulations Title 22, Division 2, Victims of Sexual Assault. No exittema men Titact No law lations No swelling feloic within normal limits. FINDINGS: Fundoscopic Examination—☐ Normal ☐ Abnormal ☐ Not done Development Assessment—⊠ Normal □ Questionable □ Abnormal, by □ DDST □ Estimate □ Other Behavioral Assessment— Normal during visit (Specify) Lucy (1915) 17 Specify thirtigh exam X-ray bone survey—☐ Normal ☐ Not done ☐ Abnormal (findings) _ Hemostasis tests performed—□ PT □ PTT □ Platelets 🗷 None □ Other _ Results Cultures for gonorrhea performed—IX genitalia IX throat IX anus. VDRL—□ Done IX Not done _ Periods regular? 🗆 Yes 🖆 No L.M.P. __ Menarche age _____ Pregnancy test—☐ Positive ☐ Negative ☐ Not performed Date of Report Signature Print Last Name 8/30/84 Eells-Ynance

UNIVERSITY OF CALIFORNIA DAVIS JPS / BED VCC. MEDICAL CENTER **SACRAMENTO** BPF#CEF. KATHRYN E. 08 30 d4 THERAPEUTIC/DIAGNOSTIC 01 13 76 EXP 10 84 PROCEDURES REPORT PG 482 6057 MALTREATMENTHISTO Give history of event(s) including time, date, place, perpetrator, circumstance, people present, etc. Underline name of merson giving each version, e.g., Father said ... Child said ... Officer said ... Diagnostic Conclusion(s): of Molestation Child's story censustrant with No physical finctions MANAGEMENT Phone Department Reported to: Officer ID No. Dependent Intake or CPS Worker Department Phone 2. Medical Follow-up: Date_ Time Scan F/U Clinic P.M.D. (Name) _ ☐ UCD Clinic (Name) __ □ Other . □ None (Why not?) _ Time ☐ None. 4. Disposition: Police Hold?

Yes

No ☐ Receiving Home ☐ Foster home ☐ Relative's home ☑ Parent's home ☐ Other Hospitalized 5. Other Treatment: Date of Report Signature Print Last Name 4: Ecces-Maree F2€11s-7Magee

Case 3:11-cv-05424-BHS Document 79-1 Filed 06/18/12 Page 17 of 25

1 IN THE UNITED STATES DISTRICT COURT 2 IN THE WESTERN DISTRICT OF WASHINGTON 3 AT TACOMA 4 5 CLYDE RAYMOND SPENCER, 6 Petitioner, 7 vs. No. C94-5238RJB 8 JOSEPH KLAUSER, Warden, Idaho State Institution; CHRISTINE 9 GREGOIRE, Attorney General, State of Washington, 10 Respondents. 11 12 13 14 DEPOSITION UPON ORAL EXAMINATION 15 OF 16 SHARON A. KRAUSE 17 18 19 DATE TAKEN: May 22, 1996 20 TIME: 10:30 a.m. 21 22 PLACE: Hall of Justice Longview, Washington 23 24 25 SUZAN R. WELLS Archer Associates, Inc. P. O. Box 1092 PLAINTIFF'S Longview, Washington 98632 EXHIBIT 24 (360) 423-2195

1		magnifying during an exam of a child, anal or
2		vaginally. It's my understanding that if there are
3		lesions or there's been tearing and healing, it may be
4		detected with a colposcope and it wouldn't by the naked
5		eye.
6	Q	Have you been involved in cases before where the
7		prosecution has presented photographs that were taken
8		with colposcopic exam?
9	A,	Well, I'm usually excluded from the courtroom when
10		that's going on, but I'm sure I know there's been
11		cases I've been involved in where that was utilized by
12		the physicians.
13	Q	Have you reviewed with physicians as a part of some of
14		your investigations photographs depicting physical
15		evidence of sex abuse through colposcopic exam?
16	A	I don't know that I've ever sat down with a physician
17		and done that. But I've seen photographs in training.
18	Q	Now, the report Exhibit No. 1 that you have in front of
19		you, do you know whether or not this report was ever
20		forwarded to the Clark County prosecutor's office?
21	A	Like I explained, I'm told it wasn't in their file. If
22		they have all the other reports, I can't imagine them
23		not having this one. Also, based on Jim Peters and
24		knowing him and knowing how meticulous he is and knowing
25		historically what I would do, there is no doubt in my

mind if they didn't have a copy, he was aware of it when I got it. We talked.

If CAIC -- If I have a prosecutor on a case, he may not have the whole case file or I may still have some reports I haven't shipped up to him, but there would be no doubt in my -- 99 percent sure that he had this information. I can't imagine him not having the report if he had all the rest of the reports. And I'm told that it was in Vancouver Police internal investigation file that they did. So why would I send it to him and not the prosecutor? That doesn't make sense.

- O Do you know how it was that Vancouver Police Department received your reports, your investigative reports in the Spencer case?
- A Not really. I don't remember -- I know that they were doing an investigation. My mind just went blank. Jim Holtz with Vancouver Police worked on it. I spoke to him. I think he may have done some interviews. It seems like there were other people. I don't remember if they got them from the prosecutor or they got them from me or they got them from records. I don't know.
- Now, you indicated that you spoke I guess recently with
 Kim Farr, deputy prosecuting attorney. And as I
 understand it, Kim Farr indicated that a review had been
 done of the prosecutor's files and they didn't have the

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